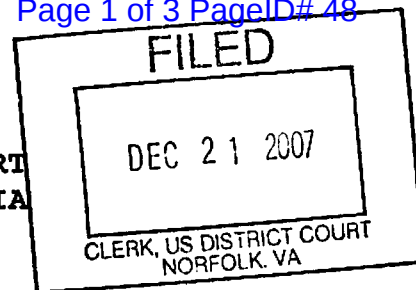


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



UNITED STATES OF AMERICA,

v.

ACTION NO. 2:07cr153

STEVE VANKESTEREN,

Defendant.

FINAL ORDER

Pursuant to Federal Rule of Criminal Procedure 58(g)(2)(B), this matter comes before the court on defendant Steve Vankesteren's ("defendant") appeal from a decision of the United States Magistrate Judge. On August 7, 2007, defendant was convicted on two counts of taking or possessing a migratory bird without a permit, in violation of 16 U.S.C. § 703 and 50 C.F.R. § 21.11. Defendant initially raised four issues on appeal: (1) the trial court erred in denying a motion to suppress; (2) the government failed to prove that the bird killed on January 17, 2007, was in fact a red-tailed hawk, as alleged in the violation; (3) the government failed to prove that a red-tailed hawk is a migratory bird protected under the Migratory Bird Treaty Act; and (4) the government failed to prove that defendant acted with the requisite mens rea.

A hearing was held before the court on December 12, 2007. At the hearing, defendant, through counsel, conceded that two of the

four issues were not viable. Two issues remain for consideration by the court: (1) whether the trial court erred in denying defendant's motion to suppress; and (2) whether the evidence was sufficient to prove that the bird killed on January 17, 2007, was a red-tailed hawk, as alleged in the charges. At the conclusion of the hearing, the court took the matter under advisement. After full review of the record, the court finds no error and **AFFIRMS** defendant's convictions and the Magistrate Judge's legal conclusions and factual findings.

Regarding defendant's argument that the trial court erred in denying his motion to suppress, the court has reviewed the issue de novo. United States v. Bursey, 416 F.3d 301, 306 (4th Cir. 2005). The court finds no error of law and accordingly affirms the trial court's denial of appellant's motion to suppress.

The court has also reviewed the evidence supporting defendant's conviction for killing a red-tailed hawk on January 17, 2007.¹ The court finds that the evidence presented at trial was sufficient to support defendant's conviction and that the Magistrate Judge's factual findings were not clearly erroneous. Accordingly, defendant's conviction is **AFFIRMED**.

¹ In reviewing a challenge to the sufficiency of the evidence, the court reviews the evidence in the light most favorable to the government. Bursey, 416 F.3d at 306. After reviewing the evidence, the court must determine whether "any rational trier of fact could have found the essential elements beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979).

The Clerk is DIRECTED to send a copy of this Final Order to all counsel of record.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
United States District Judge

Rebecca Beach Smith
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
December 20, 2007